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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/834, 777	04/03/97	HEINDEL	T 11.589.3

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EXAMINER	
CHO, D	
ART UNIT	PAPER NUMBER
3735	6
DATE MAILED:	10/27/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary	Application No. 08/834,777	Applicant(s) Heindel et al.
	Examiner CHO, David J.	Group Art Unit 3735

Responsive to communication(s) filed on 17 Aug 1998

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 35, 43, 44, 48, and 50-57 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 35, 43, 44, 48, and 50-57 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 43 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 43 and 44 provides improper dependency, i.e., depends on claim 36, which is a canceled claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 35, 43, 48, 50-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Roessler et al. '5,176,670.

Roessler discloses a disposable absorbent article comprising an outer cover, a bodyside liner, an absorbent core, and at least one hook-and-loop type mechanical fasteners on the ear

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tab, wherein the hook material includes a base sheet and stemlike projections. The stemlike projections are releasable engaged with the loop material which is joined to the outer cover. With respect to the elastic ear tab, it is the examiner's position that the waist portions 12 and 13 of Roessler anticipates applicant's 'ear tabs'. Moreover, see column 5, lines 24-40, wherein Roessler teaches the waist portion may be comprised of an elastomeric stretch bonded laminate. Alternatively, figure 11 discloses side panels 36 and 37 that may be composed an elastic material properties, see column 10, lines 12-20. In regards to the placement of the hook and loop positioning on the diaper, see column 10, lines 36-40.. With the claim limitation of peel strength of at least about 20 grams, Roessler discloses the hook and loop fastener has a peel force in the range of about 200-1200 grams.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roessler et al. Roessler discloses the invention substantially as claimed, however Roessler does not disclose the disposable article including a peel strength of from about 30 to 90 grams.

In application's specification, the peel strength is not taught to solve any particular problem or produce any unforeseen result, and therefore is considered an obvious matter of design choice to one of ordinary skill in the art. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Roessler with the peel strength of from about 30 to 90 grams as a matter of routine engineering choice barring some convincing evidence of criticality.

Response to Arguments

7. Applicant's arguments filed 8/17/98 have been fully considered but they are not persuasive.

Applicant argues that the prior art reference of Roessler fails to disclose "an elastic ear tab which is attached to and extends from at least one of the outer cover and bodyside liner of the absorbent article", however, Roessler clearly teaches the elastic ear tab, see paragraph no.

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4 of this Office Action. Moreover, it has been held that a claim is anticipated if each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice.

With respect to applicant's argument that Roessler fails to teach "pant-like structure before article is handled by user", it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitation.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Cho whose telephone number is (703) 308-0073. The Examiner can normally be reached on Monday-Friday from 7:00 am to 4:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax number for this Group is (703) 305-3590 or x3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0585.



John G. Weiss
Supervisory Patent Examiner
Group 3700

dj cho

Patent Examiner
October 26, 1998